

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-6186**

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SOLOMON SMITH, JR.,

Petitioner - Appellant,

versus

RONALD J. ANGELONE, Director of the Virginia  
Department of Corrections,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Henry C. Morgan, Jr., District Judge. (CA-96-218-2)

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Submitted: May 1, 1997

Decided: May 8, 1997

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Before WIDENER and MURNAGHAN, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Solomon Smith, Jr., Appellant Pro Se. Margaret Ann Bullock Walker, Assistant Attorney General, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals the district court's order denying relief on his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 1997). We have reviewed the record and the district court's opinion accepting the recommendation of the magistrate judge and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal.

We note that the claims that Appellant attempted to add in his response in opposition to Appellee's motion to dismiss, his objections to the magistrate judge's report and recommendation, and his informal brief were not presented to the state court. Accordingly the claims were not exhausted, and dismissal was proper on that ground. See 28 U.S.C. § 2254(b). As to Appellant's sufficiency of the evidence claim, we affirm on the reasoning of the district court. Smith v. Angelone, No. CA-96-218-2 (E.D. Va., Jan. 15, 1997).

Because the appeal presents no substantial or complex issues, we deny Appellant's motion to authorize preparation of a transcript at government expense and his motion for appointment of counsel. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED